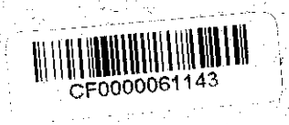

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

GA 2236/96

APPEAL OF PRISONER

No. 2985 Name ... रामदास

Father's name ... मोहन सारिकन ग्राम डोंडकी थाना छेवहारी

Residence ... पेला सरायना मध्य Age ... 35 वर्ष

Sentenced to ... आजीवन कारावास On ... 24.11.95

Under section 302 I.P.C. by ... अति. सत्र न्यायाधीश, मल्हेरा, सरायना M.P.

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ... ...

2 Date on which copy received ... ...

3 Date on which Appeal sent ... 1.9.96 ... ...

4 Whether the prisoner wishes to be represented or not – Yes / No

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No. 2985 Name ... रामदास पि. मोहन

Confined in ... केन्द्रीय ... Jail ... सरायना (म.प्र.)

No. 754/1/APW/ Dated ... 1/9/1996 ... ...

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ अति. मुख्य न्यायिक मजिस्ट्रेट, सरायना म.प्र. 324 togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न - S.T. No. 486/93 प्रमाणित निर्णय प्रतिलिपि

Superintendent 3/9
केन्द्रीय बन्दीगृह (पु.) सरायना
Jail

Date of receipt in ... office ... Dy. Registrar 14/11/96

Date of receipt record to accompany the ... 14/11/96

Memo of Appeal to the Appellate court ... Mvo PI S.C.C. Pur

No ... Dated ... 199 ...

Forwarded to the ... High Court of Madhya Pradesh JABALPUR ...

Date of receipt in Appellate Court ... 20 SEP 1996 ... Reg. No. 554 Deputy Clerk

(P. T. O.)

(17)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक :- Cr.A. No. 822 36 /96 सन् ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Dhirendra Mishra, JJ.

1-3-2007:-

Shri D.R. Sharma, Sr. Advocate with Ms Anita Singh, Advocate for the appellant.

Shri Ashish Shukla, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 14/11/95 passed by the Additional Sessions Judge, Manendragarh, District Surguja, in S.T. No.486/93 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

Case of the prosecution, in brief, is that on 31st August 1993 at about 6 p.m. when Ramsai and Chain Singh were at their house, accused Ramdas along with his two daughters went to their house and made extra judicial confession before them that he has committed murder of his wife with carpenter axe. Thereafter, Anand Lal, brother of the accused, also came and said same thing. Ramsai asked Chain Singh to go to the house of the accused to ascertain veracity of the statement made by him. Therefore, Chain Singh, Amar Singh and Anand Lal went to the house of Ramdas and saw that body of Bandhwatolhin @ Gulbasiya was lying in

P.T.O.

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the house of the accused. Therefore, Chain Singh reported the matter to the police station Kelhari under F.I.R. Ex.-P/1. After registering the crime, Station House Officer left for scene of occurrence, prepared inquest Ex.-P/2 on the body of Bandhwatolhin @ Gulbasiya. He also prepared site plan Ex.-P/3 of the place of occurrence. While in the police custody, the accused gave memorandum Ex.-P/4 regarding carpenter axe, weapon of offence, in pursuance of that, he got recovered carpenter axe, which was taken into possession under Ex.-P/5. Shirt and Lungi of the accused were taken into possession under Ex.-P/6. Plain soil and blood stained soil as also 6 broken pieces of glass bangles of the deceased were taken into possession under Ex.-P/7. The body of the deceased was sent for post-mortem examination to the Primary Health Centre, Manendragarh where Dr. Sunil Kumar Gupta (PW-8) conducted post-mortem, prepared post-mortem report Ex.-P/9 in which he opined that cause of death is due to grievous injuries, fracture of bones and due to excessive haemorrhage and shock. The death was homicidal in nature.

After completion of the investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Manendragarh, who in turn committed the case to the Sessions Judge, Surguja, from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 8 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied material appearing against him in the prosecution evidence, stated that he is innocent and has been falsely implicated in the crime. Learned Additional Sessions

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Judge after hearing learned counsel for the respective parties convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties.

Learned counsel for the accused/appellant has not disputed homicidal death of the deceased. Moreover, Dr. Sunil Kumar Gupta (PW-8), who conducted post-mortem on the body of the deceased, has stated that 3 injuries were found on the body of the deceased, out of which, 2 injuries were on head and one injury was on knee. Cause of death was due to excessive haemorrhage and shock. Death was homicidal in nature. Apart from that, PW-1 Chain Singh and PW-3 Ramsai have categorically stated that the accused made extra judicial confession before them. Therefore, in view of the above evidence, it is established that death of the deceased was homicidal in nature.

As far as involvement of the accused/appellant in the crime in question is concerned, there is no direct or ocular evidence in this matter. The whole case rests on the circumstantial evidence i.e. extra judicial confession made by the accused before PW-1 Chain Singh and PW-3 Ramsai. In order to rest conviction based on extra judicial confession the prosecution must establish that extra judicial confession made by the accused was voluntary, prompt and true. PW-3 Ramsai has stated that he is village patel. In the evening he along with his son was at his residence, he was not well. At that time, accused came to their residence along with his two daughters carrying them in his lap. Just after he reached to his residence he touched his feet and said that he be saved as he has committed murder of his wife. At that time, brother of the accused, Anand Lal reached there and he told that the accused has committed murder of

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

his wife. He asked his son to go and find out the fact and report the matter to the police. PW-1 Chain Singh has corroborated the above evidence and stated that the accused made extra judicial confession in his presence before his father. Brother of the accused Anand also reached there and said that the accused has committed murder of his wife. Thereafter, he went to the house of the accused and saw the body of his wife, at that time, she was breathing. They were making preparation to take her to the hospital but in the meantime, she succumbed to the injuries. In cross-examination of these witnesses, nothing has been elicited to make evidence of these witnesses unreliable or untrustworthy. Both the witnesses are independent witnesses. It has not come in cross-examination that any pressure was exerted on the accused. Moreover, PW-1 Chain Singh immediately lodged the report Ex.-P/1 in which it has been mentioned that the accused came to their house and made extra judicial confession, therefore, in view of the above evidence of these two witnesses and F.I.R., it is established that the accused made extra judicial confession voluntarily, that too with all promptness and same was true. Moreover, when the accused was in the police custody, he gave memorandum Ex.-P/4 regarding the place where he kept carpenter axe, in pursuance of that he got recovered the same, which was taken into possession under Ex.-P/5. It has been mentioned in Ex.-P/5 that blood spots were present on the carpenter axe. The memorandum and seizure memo have been proved by Investigating Officer Narayan Singh who has stated that the accused made memorandum (Ex.-P/4) before him, in pursuance of that, carpenter axe was taken into possession at the instance of the accused under Ex.-P/5. PW-5 Dirpal Singh has also proved memorandum and seizure memo of carpenter axe. Therefore,

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

extra judicial confession is corroborated by the circumstantial evidence i.e. recovery of weapon of offence i.e. carpenter axe at the instance of the accused.

For the foregoing reasons, we do not find any illegality or infirmity in the judgment of the trial Court.

In the result, the appeal being devoid of merit is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Barve